



STATE OF MAINE
WORKERS' COMPENSATION BOARD
Board of Directors' Business Meeting

August 23, 2022

A business meeting of the Maine Workers' Compensation Board of Directors was conducted on Tuesday, August 23, 2022 via Zoom with some directors attending in person at the Board's Central Office on 442 Civic Center Drive, Augusta.

PRESENT: In person: John Rohde (*Executive Director/Chair*), Ron Green, Glenn Burroughs, and Serina DeWolfe (*Directors*), Richard Hewes (*General Counsel*); Remote via Zoom: Lynne Gaudette, Richelle Wallace, and Penny Picard (*Directors*).

I. CALL TO ORDER

Executive Director Rohde called the meeting to order at 10:06 a.m. with 27 people participating remotely. Executive Director Rohde reviewed the new hybrid meeting format and remote participation procedures. Board members and staff introduced themselves for the recording. Voting is to be conducted by roll call vote instead of a show of hands.

II. APPROVAL OF MINUTES

1. Draft Minutes of 6/14/2022 Board of Director's Business Meeting

Director Burroughs MOVED TO ACCEPT THE MINUTES OF THE 6/14/2022 BOARD MEETING AS WRITTEN;

Director Gaudette SECONDED. **MOTION PASSED 7-0.**

III. SUBCOMMITTEE REPORTS

1. Personnel Subcommittee

Hearing Officer Richard Dunn will be retiring at the end of this year after more than 30 years of service with the Board.

The troubleshooter position in Lewiston, held by Tony Peverada before he retired, will be moved to Information Management and reclassified to a Management Analyst I position.

2. IME Subcommittee, Legislation

There are no updates from the IME subcommittee. Directors Lynne Gaudette and Glenn Burroughs have been serving on an ad hoc committee to review possible amendments to the Workers' Compensation Act in advance of the start of the next legislative session.

More information will be provided at future meetings. Legislative proposals are due at the Revisor's office on December 1, 2022.

3. Budget Subcommittee

Begin transcript:

MR. ROHDE: All right. That brings us to the budget. So where we are now is we need to submit, we the Board, need to submit our biennial budget proposal by September First with the bureau of the budget. And to do that, we have to agree on what we believe the projected expenditures will be for the coming -- for the fiscal years involved in that biennial budget, and that will be 2023-'24, and '24-'25.

At this point, because our assessment cap is lower than those projected expenditures, we also have to account for the difference between projected expenditures and the existing cap of \$13 million dollars.

So Ronnie and Richelle, along with Jan Adams, who presumably is on the call somewhere, and Richard, who you met a minute ago if you didn't know him before, and I, we've met, I think, four times at least since the last board meeting. Ronnie and Richelle have worked very hard on this issue, as have Jan and Richard. I think we've made substantial progress. I think we accomplished a lot in that particular subcommittee meeting and I'll let Ronnie and Richelle speak from their perspectives. We got as far as, I think we've agreed on what the spending would look like in the coming biennium. It's about 14.32 and 14.53 in the first and second years of that biennium. Where we were unable to reach consensus is on how to show sufficient revenue to meet those projected expenditures.

Again, the conversation focused around the assessment cap due to the subject. What the assessment cap is, is the Board's authority to raise money and what it allows the Bureau of Budget to assume is that we will be able to generate sufficient revenue to pay for projected expenditures.

The assessment amount or assessment cap that's in the statute doesn't obligate the board to assess that amount. It just shows that we have the ability to do so. So any of the year, obviously, where the cap is at or above projected spending, they're fine. That's not the case this particular year. The cap is \$13 million in the statute. And as I said, it's 14.23 and 14.53, or 32. I (indiscernible) the numbers there, so again, a lot of progress made. But I'll let Ronnie and Richelle give their perspectives in any order you choose.

MR. GREEN: Yeah. I'll make a stab at it. Before I even start, I'll apologize because I'm going to work off just a bunch of hand-scribbled notes that

were taken over the last several weeks. I think John did mention that we've met I think at least four times. I think it was five. I know we've met four times just in the last month on this. I guess just going down through some of the bullet points that I've got, you know, 90 percent of the budget is already set before we even see it. I think that's set by DAFS (indiscernible) and that's stuff like administration funds, personnel costs, rent, other things that, again, that we don't really have any control over here at the Board. The only thing we really have much control over is ten percent of the budget.

One of the things that surprised me a little bit -- I think maybe Richelle will agree, but we got hit just in this year alone, or in this next biennium alone, for \$600,000 just in the technology line. It was quite an increase that we didn't see coming. That was over \$300,000 in each year of the biennium, which that's significant money. That's real money. Again, as an example, that's one of the things we don't have a lot of control over.

I think when we started this process, labor came to the table with the idea because we've talked about it so many times over the years of eliminating the cap. And early on, I learned that management's side of the table really didn't have any appetite to totally eliminate the cap, and I can't say I totally disagree with them because it leaves kind of an unknown out there if you don't have something firm for a number to use. So we was also willing to look at something where we would tie the cap to something similar to what the PUC commission does where they tie it to their actual budget. And again, a lot of our budgets are set before we even see it. So I felt that was a decent safeguard to put in place.

Again, I'm probably bouncing around just a little bit, but I'm working off these hand-written notes that were taking over time. But you know, this cap has been an issue as long as I've been on the Board, and I can't remember now, how long it's been. I think I was on the Board 40 years at this point. Or it seems like it, anyway.

But the cap has always been an issue. And it's kind of a complicated issue because there's no real facts or science behind it. It's almost like it's a number we just randomly go grab out of the air. I know it does -- I mean, we can't assess any more money than what the cap is, but again, it's never really tied to anything. It's just a guess. Just going back in history and looking, most recently in 2020, the budget finance committee talked about the cap and extending it for six years, looking at something similar to what we did back in 2016, which was roughly 4 percent per year. Management didn't have any appetite to support that for six years. They felt it was too long. I can't say I necessarily disagree with that.

So, we looked at four, moving that cap out four years and setting it. The business community had no appetite to do that and wouldn't support it during the pandemic. So, we actually backed off from that and both sides agreed not to actually set a new cap for the next biennium, but to use funds out of the reserve account to get us over the hump. You know? Not necessarily hump, but to maybe get us through the pandemic and have a better idea of what the world would look like after that.

You know, we only know the budget for the next biennium. That's the only thing we know at any given time. We don't know what it's going to look like four years -- three years down the road, four years down the road or anything like that. We can only work with what we have in front of us. And that's what makes that assessment cap, moving it out beyond those two years, very difficult because we have no idea what those numbers look like. You know, I think we're at a point, like I said, we had four meetings and they were long -- four or five meetings -- and they were long meetings. I mean, I think we did a lot of work, Jan. You know, my hat's off to Jan and Richard and John because there were just tremendous amounts of information. You know, like I said, I've been involved in this process for a long time, but I think I learned a lot more about it this time than I've ever learned before.

But you know, again, we're up against the budget that we need to deal with for the next biennium. I think it needs to be in by September First, John, if I remember right. So that's not too far away. Next Thursday, actually. So I think we're kind of under the gun to get something dealt with, with that. We know what that budget is. We know what those numbers are going to be. I think it's something we need to address.

You know, I feel the labor side of the table has come to the table willing to negotiate and try to figure this thing out, maybe put it to rest for once and for all, but I'm not sure -- I'll let Richelle speak to that, but I don't think we're quite there yet.

And the rest of my notes really just kind of goes back to the cap and how it's pretty hard to set a number when you have no idea what those budgets are going to look like moving forward. So, I probably rambled on about that long enough. I'll let Richelle try to straighten it out.

MR. ROHDE: You got past three seconds. And that was your goal for the meeting so you're good. Richelle?

MS. WALLACE: Yeah. I echo a lot of what Ronnie said, particularly around the work that Jan and John have been doing. We certainly have put a lot of time and energy into trying to understand the process how the budget works; sort of the history of the cap and so on. I think one of

the challenges that we ran into was, you know, by the time the Board was able to get -- when I say the Board, I should the agency, was able to get the numbers from the BoB [Bureau of the Budget], we didn't actually see something that was close until late last week, so it was, I think, a bit of a struggle. It's not anybody's fault. It's the way the process works.

So, I don't think we -- the way the budget was proposed, I think that we all agree that we're heading in the right direction there. I think where perhaps we have not been able to come to a consensus was what the change in the cap is, how much it would be, and for what duration. Historically, we've looked at about a four percent increase year over year for that cap, and the last couple of increases lasted a number of years. So, we weren't able to come to a consensus on what that increase would look like and that duration.

So, I think those have been sort of my struggles through the process, but I do commend, again, John, Jan, and Richard, and Ronnie for the patience through the process and all the work that we put into it.

MR. ROHDE: Thank you both. I'll chime in. If somebody's thrown a hand in the air that I've that I've missed here, but -- so the goal here, at least in my perspective, I hope from everybody's, is to try to reach a consensus on something we could submit. And if I neglected to mention this in my warmup here, I apologize, but again, we need two things in this budget submission.

It will be one document, but the amount of proposed spending will be one piece of it, and then there will be legislation that will need to go along with it to explain how the Board will be able to raise sufficient funds to pay for it, which is what we're doing here. We're very close, I guess, is my take on this. And I'd be remiss if I didn't take one more shot at seeing if we could work something out. If we get into this conversation and folks want a caucus, they've got an old school caucus they can do here in Augusta obviously.

On the management side, I'm pretty sure, I won't make this promise unless Debi nods or Lindsay nods. We can make a breakout room. You would just let us need to know who would be in it, then you can have a separate Zoom place to go to, to talk, and then come back in. So, if we get to that point, don't hesitate to ask, and we'll try to set it up. If that doesn't work, we can find another way.

So, you know, we did talk about a number of things. And again, they worked, the subcommittee, very hard. It's a difficult issue. I do appreciate the timing, right, it's hard. I think Jan is probably the one who sweat the most bullets on that one because she's waiting to get the

final numbers to plug them into the system. She's got to enter information that's going to be accepted. It's all computer-based, as you can imagine now. And we talked a little bit about the fact that talking about a long-term solution with a September First deadline, it's a short turnaround and I get that. I understand why that would be a problem for folks, which is why one proposal we came up with towards the end was well let's just increase the cap enough to get through this biennium. That would be about 14.7 – should be fine. Include that along with the spending we talked about. And then, keep the conversation going and try to find, ah, presumably we would talk about it in calendar year 2023 with an eye toward submitting legislation by December First so that in the second regular session of the next legislature in '24, the same result that you had in '16, you could adjust the cap or find some solution to the cap that will avoid us having to deal with both the cap and the budget simultaneously again because it does obviously complicate matters.

By way of perspective, back in 2016, I think -- I wasn't part of the discussion, but I know there was an initial vote to remove the cap and then there was some concern from the business representatives that there should be a cap, and so Paul Sighinolfi, my immediate predecessor, met with some of the management members, they crunched some numbers and came up with the 13 million, which is either multiplying $11.2 \times 16 \times 16.1$ -- is that right -- four percent per year, or I think it works out to 3.8 percent per year increase year over year.

We're starting from a budget now of about 13.7 for this particular fiscal year. So if we go to 14.7 just to get this in that, I think, is a 3.4 percent increase over where we're at now per year, right? I think it's a little less than the 3.8 that was in the original. So that would be my pitch. Let's just get something -- again, if we can get to a unanimous decision, a consensus decision, I would love to be able to do that. Submit the budget that way. Spending -- I think there's a motion somewhere -- if I'm misquoting the numbers, I apologize, but 14.32 and 14.53, raise the cap to 14.7. The language would essentially say, so if you're familiar with 154 subsection 6 (A), the opening line is subject to the effect assessments issued pursuant to this subsection may not be designed to generate -- and then it goes on from there -- more than would be the phrase -- 14.7 million dollars beginning in the 2023-2024 fiscal year. And that again, that should satisfy the budget and allow us to get this thing processed accordingly. Ronnie?

MR. GREEN:

I'D LIKE TO MAKE A MOTION. I MOVE to approve a budget in the projected amounts of \$14,320,000 for fiscal year 2024 and \$14,530,000 for the fiscal year 2025 and amend 39-A MRSA

subsection 154 (6) (A) so that the maximum amount -- so that the maximum assessment may not be designed to produce more than \$14,700,000 beginning in the 2023-'24 fiscal year.

I can give that to you (indiscernible).

MR. ROHDE: Is there a second?

MR. GREEN: Debi, do you want this?

MR. ROHDE: Yep. Anybody want to second Ronnie's motion?

MR. BURROUGHS: I'll second it.

MR. ROHDE: Now it has been moved and seconded to submit a budget spending of approximately 14.32 and 14.53. Maximum assessment, if you will, in shorthand, would be 14.7 beginning in the 2023-'24 fiscal year. Any discussion?

MS. WALLACE: I just wanted to point out that the proposed increase is about 13 percent higher than the existing cap, just to clarify. And that's for two years, where I think the past couple of times, we've gone for four to six years. So just putting that out there. I'm not sure if it's considered discussion.

MR. ROHDE: Yeah, so if I could comment on that. Did you want to go -- am I interrupting you, Ronnie?

MR. GREEN: No. Well, you can comment on it if you want. I think I would probably say the same thing.

MR. ROHDE: Yeah, so in 2016, this isn't necessarily obvious from anything in the statute or otherwise. That was the fourth quarter of the 2015-2016 fiscal year. And at that time, the Board's budget was 11.2 million and the cap was 11.2 million. So the cap and the budget were aligned; in April or whatever it was that it was signed into law. That increase affected the coming biennium, which would be '17-'18, '18-'19 and then the subsequent one -- four years after that. But it was done at a time when the cap and the budget were the same.

So, we did discuss this a couple of years ago. Richelle was not on the budget subcommittee two years ago, so she wasn't part of any of those discussions. We had a similar conversation of saying essentially let's just do what the Board did in 2016, which is either 16 percent or 3.8 percent, pick your multiplier, I guess. If we had done that two years ago, we wouldn't necessarily be having this conversation. So, you know, the

change in the cap, if you only look at these two years, I suppose we have to ignore the fact that two years in between we didn't act on it for reasons, I get it, was -- I hope it was the middle of the pandemic; maybe the height of the pandemic at this point. And there was some reticence to do that and that was fine. So, we tided ourselves over with the reserve account. It made sense then, but it left us two years behind schedule, if you will, in sort of addressing. So, we've been catching up for two years, if you will, and then if we wanted to go forward from there, that's how that would all pan out. Ronnie?

MR. GREEN: Yeah, no, that actually covered it probably a lot better, smoother terms than I could cover what happened in 2016 and what didn't happen in 2020.

I just -- you know, I want to speak to my motion. I think it does a couple things. I think it gets the budget taken care of for this year, which obviously it has to be done and submitted by next Thursday, which isn't very far away, so that we jump that hurdle -- we do that. The assessment cap that I've proposed, you know, is not inflated whatsoever. It pretty much just covers what the next biennium is going to look like. And I think it gives us some breathing room to sit back and continue the discussions on the cap moving forward beyond the next biennium and how we address that. Whether we tie it to the budget somehow or try to come up with some number or whatever we do with it. It just gives us a little breathing room and gets us, you know, we're standing on the edge of the cliff right now. We've got to do something, so I think it just buys us a little bit of time to be able to do this in a time where we're not up against the gun. So that's my take on it.

MR. ROHDE: I just did some math. You can see, I whipped my phone out. I think the 13 percent increase, if you look at it from the four-year period, right, you do a little over three-and-a quarter percentage points, but anybody else have anything they wanted to add?

I see no further discussion. I guess we'll move to a vote. Again, the pending motion is to submit a budget, approve a budget in projected amounts of 14.32 million for fiscal year '24; 14.53 for fiscal year 2025; and amend Title 39-A 154 (6) (A) so that the maximum assessment may not be designed to produce more than \$14.7 million beginning the '23-'24 fiscal year. With that said, I'll go around the horn.

MR. ROHDE: Penny?

MS. PICARD: No.

MR. ROHDE: Glenn?

MR. BURROUGHS: Yes.

MR. ROHDE: Lynne?

MS. GAUDETTE: No.
MR. ROHDE: Serina?
MS. DEWOLFE: Yes.
MR. ROHDE: Richelle?
MS. WALLACE: Nay.
MR. ROHDE: Ronnie?
MR. GREEN: Yes.

MR. ROHDE: I am also a yes, so that motion passes 4 to 3.

Ronnie?

MR. GREEN: If I'm not out of order, I would like to hear from the management side why they don't support this -- this motion (indiscernible).

MS. WALLACE: Well, part of the problem is the timing. We, I mean, literally got the budget numbers late last week. The second issue is raising the cap 13 percent now, which by the way, we were in support of the budget and we were in support of raising the cap. The issue is we're going to be looking at this cap again in two years and the guess is that we're going to want to increase it again. So that really is the feedback that we're getting from the business community. So that's really my take on it. I don't know if anybody else wants to comment.

MR. ROHDE: Well, that's good news and bad news. But we'll keep talking about it, obviously. What this will do is just get this budget submitted. I don't think I can keep working on this. I do want to avoid in August of 2024, a repeat of this. So, try and find a solution before we do the budgeting process two years from now. It seems like a long time, but it will come sooner than we expect. So, you know, we keep working on this issue (indiscernible), not tomorrow, obviously, but -- Glenn?

MR. BURROUGHS: I have a question for my counterparts. What kind of numbers would you have been looking at or are you looking at in the future?

MS. WALLACE: Well, that's all tied to the budget, right?

MR. BURROUGHS: Everything we're doing is tied to the budget.

MS. WALLACE: Historically, for the last 20 years, we've gone up four percent year over year, around, for the cap. We're at 13 million now; we're going to 14.7, and in two years, we're going to be at the table again looking for another increase. So that's really the challenge and the concern. Businesses, as you know, are faced with lots of increases right now and for us to say that we're going to go up 13 percent now and

there's a chance -- who knows what that's going to look like in two years. There's just not an appetite for that.

MR. BURROUGHS: May I respond?

MR. ROHDE: Yeah.

MR. BURROUGHS: In response to that, that's why we're all volunteers to do this work and make the tough decisions. We don't make everybody happy with any of our decisions, obviously, and it's just something we need to do to protect the Board to make sure that it functions properly. That's my take.

MS. WALLACE: Yes. Well, I think we all want the Board to function properly. We just -- you know, it's funded by employers and we're just sensitive to that pace of increase and the duration, so that's where we landed. I think we may have to agree to disagree in this case.

MR. ROHDE: Yeah, I think we've done that part for (indiscernible), but it just -- because we did spend a lot of time talking and I think made a lot of progress in understanding. And this is one of the things that I think makes the conversation complicated, is the cap itself is actually -- is related but not tied to what the Board will ultimately be asking employers to contribute through the form of the assessment. And over the last 20 years we haven't assessed the maximum allowable a single time.

So, I understand that the perception might be well, if they're saying 14.7 and this and this and this, and this is sort of a guarantee as to what the increase per year to employers would be. But the history of the assessment is that it hasn't changed by those same percentages.

Again, we'll keep having this conversation, But I just wanted folks to understand they're related by separate concepts, right? The most important thing today that the assessment cap does is allow the Board to submit a balanced budget on paper.

When the budget subcommittee starts having discussions -- well, in theory, we'll have next year's assessment for the '23-'24 fiscal year. That's due by May First. So in theory, we meet in April or so and then we say well, here's how much we're actually going to assess. Practically speaking, that may not happen because if the budget is not approved until June, we mentioned the subcommittee, we won't know. That's when we'll find out what the actual change from year to year to year, and the Board, to its credit, has done a very good job of keeping that assessment rate in a very narrow band for a number of years. And I presume we're all

going to keep trying to do that. Just so folks – I haven't made it more confusion, hopefully – I haven't – it's somewhat unrelated as to what's going to happen later on down the line.

Anything else? All right. Thanks again, Ronnie and Richelle for their hard work on the budget.

Transcript ends.

Director Green MOVED TO APPROVE A BUDGET IN THE PROJECTED AMOUNTS OF \$14,320,000 FOR FISCAL YEAR 2024 AND \$14,530,000 FOR FISCAL YEAR 2025 AND TO AMEND 39-A M.R.S.A. §154(6)(A) SO THAT THE MAXIMUM ASSESSMENT MAY NOT BE DESIGNED TO PRODUCE MORE THAN \$14,700,000 BEGINNING IN THE 2023-24 FISCAL YEAR.

Director Burroughs SECONDED. **MOTION PASSED 4-3.** (*Directors Gaudette, Picard and Wallace opposed.*)

IV. EXECUTIVE DIRECTOR REPORT

1. Portland Regional Office

Most of the information was covered by the subcommittee reports, but Executive Director Rohde added that the mold remediation project at the Portland office is still in work. At this time, only one portion of the project has been completed. It continues to be a slow-moving and difficult project.

V. GENERAL COUNSEL REPORT

1. Personnel

Attorney Chelsea Marcous has completed her move and is now working as an advocate in the Advocate Division in Caribou.

2. Section 213 Petition

General Counsel Richard Hewes held a conference of counsel regarding the petition for the extension of benefits due to extreme financial hardship. A second conference has been scheduled for September. There is no timeline yet for the progress of the case but one should be established at the upcoming conference.

3. Annual Regulatory Agenda

The Secretary of State's office recently notified the Board that the Annual Regulatory Agenda must be filed. This filing is an annual projection of items that could be considered for rulemaking. It is general in its phraseology to allow some flexibility for

the board to propose rule changes. 5 MRSA § 8060 requires administrative agencies to submit regulatory agenda to the Secretary of State within 100 days of the adjournment of the most recent legislative session.

The filing deadline for this year was set at August 17th. Since the board did not hold a July meeting it was not able to vote on this item until today. GC Hewes communicated with the Secretary of State's Office and explained the timeline. There will be no problems with the Board voting on the Regulatory Agenda at today's meeting and submitting it immediately after that.

Director Green MOVED TO APPROVE THE ANNUAL REGULATORY AGENDA AS WRITTEN.

Director Burroughs SECONDED. **MOTION PASSED 7-0.**

VI. OLD BUSINESS

1. Chapter 5 Rulemaking

The stakeholder group has met several times to discuss potential changes to chapter 5, and the forms that authorize the release of mental health records. Gwen Simmons, from the stakeholder group, is drafting a proposed HIPA compliant form to be discussed at the next meeting later this week. The proposed changes will likely be brought to Board in October for review and discussion.

VII. NEW BUSINESS

1. 1st Quarter 2022 Compliance Report

Carrie Pomeroy presented a draft of the 1st Quarter 2022 Compliance report. She reported that the draft report went out to all insurers and good response was received with all but 8 getting back to Carrie. There hasn't been much change in First Report of Injury (FROI) compliance, we are still below benchmark. Payments are steady just below benchmark. There has been a good increase in Memorandum of Payment (MOP) compliance, with a 9% increase in the first quarter. Though this is still below benchmark. Wage and fringe benefit reporting is still sagging, but Monitoring is looking into it. Carrie not reported there are also a few new insurers.

Director Burroughs asked if there was a plan in place to address the wage and fringe benefit deficiencies. Monitoring needed to get a handle on the new MOP process and FROIs before tackling wages and fringe benefits, but yes, there are planning for the next process. Carrie added that Monitoring, Audit, and Enforcement (MAE) have been having monthly meetings which has been very helpful as well.

Executive Director Rohde added that staff has done a lot of work to get the MOP penalty process going. Additionally, there have been a lot of vacancies within the Abuse

Investigation Unit. Two of those positions are going to be filled with internal candidates in September.

Director Green MOVED TO ACCEPT THE 1st QUARTER COMPLIANCE REPORT AS WRITTEN;

Director Wallace SECONDED. **MOTION PASSED 7-0.**

VIII. ADJOURNMENT

Director Green MOVED TO ADJOURN;

Director Wallace SECONDED. **MOTION PASSED 6-1.** (*Director Burroughs opposed.*)

The meeting formally adjourned at 10:55 a.m.